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APPLE INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH FANTA,

Plaintiff,

v.

APPLE INC., a California corporation  
doing business in California; and DOES  
1-50, inclusive,

Defendant(s).

Case No. 5:22-cv-04244-EJD

District Judge: Edward J. Davila  
Magistrate Judge: Virginia K. DeMarchi

**STIPULATED PROTECTIVE  
ORDER RE THE DISCLOSURE  
AND USE OF DISCOVERY  
MATERIALS**

Complaint Filed: June 22, 2022  
Action Filed: July 21, 2022

Re: Dkt. No. 33

1 Plaintiff Joseph Fanta (“Plaintiff”) and Defendant Apple Inc. (“Defendant”) anticipate that documents, testimony, or information containing or reflecting  
 2 confidential, proprietary, trade secret, medical, psychological, financial,  
 3 employment, and/or commercially sensitive information are likely to be disclosed or  
 4 produced during the course of discovery, initial disclosures, and supplemental  
 5 disclosures in this case and request that the Court enter this Order setting forth the  
 6 conditions for treating, obtaining, and using such information.

8 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds  
 9 good cause for the following Agreed Protective Order Regarding the Disclosure and  
 10 Use of Discovery Materials (“Order” or “Protective Order”).

# 11 1. **PURPOSES AND LIMITATIONS**

12 (a) Protected Material designated under the terms of this Protective  
 13 Order shall be used by a Receiving Party solely for this case, and shall not be used  
 14 directly or indirectly for any other purpose whatsoever.

15 (b) The Parties acknowledge that this Order does not confer blanket  
 16 protections on all disclosures during discovery, or in the course of making initial or  
 17 supplemental disclosures under Rule 26(a). Designations under this Order shall be  
 18 made with care and shall not be made absent a good faith belief that the designated  
 19 material satisfies the criteria set forth below. If it comes to a Producing Party’s attention  
 20 that designated material does not qualify for protection at all, or does not qualify for the  
 21 level of protection initially asserted, the Producing Party must promptly notify all other  
 22 Parties that it is withdrawing or changing the designation.

# 23 2. **DEFINITIONS**

24 (a) “Discovery Material” means all items or information, including  
 25 from any non-party, regardless of the medium or manner generated, stored, or  
 26 maintained (including, among other things, testimony, transcripts, or tangible things)  
 27 that are produced, disclosed, or generated in connection with discovery or Rule 26(a)  
 28 disclosures in this case.

(b) “Outside Counsel” means (i) outside counsel who appear on the pleadings as counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is reasonably necessary to disclose the information for this litigation.

(c) “Party” means any party to this case, including all of its officers, directors, employees, consultants, retained experts, and outside counsel and their support staffs.

(d) “Producing Party” means any Party or non-party that discloses or produces any Discovery Material in this case.

(e) “Protected Material” means any Discovery Material that is designated as “CONFIDENTIAL,” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as provided for in this Order. Protected Material shall not include: (i) advertising materials that have been actually published or publicly disseminated; and (ii) materials that show on their face they have been disseminated to the public.

(f) “Receiving Party” means any Party who receives Discovery Material from a Producing Party.

### 3. **COMPUTATION OF TIME**

The computation of any period of time prescribed or allowed by this Order shall be governed by the provisions for computing time set forth in Federal Rules of Civil Procedure 6.

### 4. **SCOPE**

(a) The protections conferred by this Order cover not only Discovery Material governed by this Order as addressed herein, but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by Parties or their counsel in court or in other settings that might reveal Protected Material.

(b) Nothing in this Protective Order shall prevent or restrict a Producing Party’s own disclosure or use of its own Protected Material for any purpose, and nothing

1 in this Order shall preclude any Producing Party from showing its Protected Material to  
 2 an individual who prepared the Protected Material.

3 (c) Nothing in this Order shall be construed to prejudice any Party's  
 4 right to use any Protected Material in court or in any court filing with the consent of the  
 5 Producing Party or by order of the Court.

6 (d) This Order is without prejudice to the right of any Party to seek  
 7 further or additional protection of any Discovery Material or to modify this Order in  
 8 any way, including, without limitation, an order that certain matter not be produced at  
 9 all.

#### 10 5. **DURATION**

11 Even after the termination of this case, the confidentiality obligations  
 12 imposed by this Order shall remain in effect until a Producing Party agrees otherwise  
 13 in writing or a court order otherwise directs.

#### 14 6. **ACCESS TO AND USE OF PROTECTED MATERIAL**

15 (a) Basic Principles. All Protected Material shall be used solely for this  
 16 case or any related appellate proceeding, and not for any other purpose whatsoever,  
 17 including without limitation any other litigation, patent prosecution or acquisition,  
 18 patent reexamination or reissue proceedings, or any business or competitive purpose or  
 19 function. Protected Material shall not be distributed, disclosed or made available to  
 20 anyone except as expressly provided in this Order.

21 (b) Secure Storage, No Export. Protected Material must be stored and  
 22 maintained by a Receiving Party at a location in the United States and in a secure  
 23 manner that ensures that access is limited to the persons authorized under this Order.  
 24 To ensure compliance with applicable United States Export Administration  
 25 Regulations, Protected Material may not be exported outside the United States or  
 26 released to any foreign national (even if within the United States).

27 (c) Legal Advice Based on Protected Material. Nothing in this  
 28 Protective Order shall be construed to prevent counsel from advising their clients with

1 respect to this case based in whole or in part upon Protected Materials, provided counsel  
2 does not disclose the Protected Material itself except as provided in this Order.

3 (d) Limitations. Nothing in this Order shall restrict in any way a  
4 Producing Party's use or disclosure of its own Protected Material. Nothing in this Order  
5 shall restrict in any way the use or disclosure of Discovery Material by a Receiving  
6 Party: (i) that is or has become publicly known through no fault of the Receiving Party;  
7 (ii) that is lawfully acquired by or known to the Receiving Party independent of the  
8 Producing Party; (iii) previously produced, disclosed and/or provided by the Producing  
9 Party to the Receiving Party or a non-party without an obligation of confidentiality  
10 and not by inadvertence or mistake; (iv) with the consent of the Producing Party; or (v)  
11 pursuant to order of the Court.

## 12 7. DESIGNATING PROTECTED MATERIAL

13 (a) Available Designations. Any Producing Party may designate  
14 Discovery Material with any of the following designations, provided that it meets the  
15 requirements for such designations as provided for herein: "CONFIDENTIAL," or  
16 "CONFIDENTIAL - ATTORNEYS' EYES ONLY".

17 (b) Written Discovery and Documents and Tangible Things. Written  
18 discovery, documents (which include "electronically stored information," as that phrase  
19 is used in Federal Rule of Procedure 34), and tangible things that meet the requirements  
20 for the confidentiality designations listed in Paragraph 7(a) may be so designated by  
21 placing the appropriate designation on every page of the written material prior to  
22 production. For digital files being produced, the Producing Party may mark each  
23 viewable page or image with the appropriate designation, and mark the medium,  
24 container, and/or communication in which the digital files were contained. In the event  
25 that original documents are produced for inspection, the original documents shall be  
26 presumed "CONFIDENTIAL – ATTORNEYS' EYES ONLY" during the inspection  
27 and re-designated, as appropriate, during the copying process.  
28

(c) Native Files. Where electronic files and documents are produced in native electronic format, such electronic files and documents shall be designated for protection under this Order by appending to the file names or designators information indicating whether the file contains “CONFIDENTIAL,” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” material, or shall use any other reasonable method for so designating Protected Materials produced in electronic format. When electronic files or documents are printed for use at deposition, in a court proceeding, or for provision in printed form to an expert or consultant pre-approved pursuant to paragraph 9, the party printing the electronic files or documents shall affix a legend to the printed document corresponding to the designation of the Designating Party and including the production number and designation associated with the native file. No one shall seek to use in this litigation a .tiff, .pdf or other image format version of a document produced in native file format without first (1) providing a copy of the image format version to the Producing Party so that the Producing Party can review the image to ensure that no information has been altered, and (2) obtaining the consent of the Producing Party, which consent shall not be unreasonably withheld.

(d) Depositions and Testimony. Parties or testifying persons or entities may designate depositions and other testimony with the appropriate designation by indicating on the record at the time the testimony is given or by sending written notice of how portions of the transcript of the testimony is designated within thirty (30) days of receipt of the transcript of the testimony. If no indication on the record is made, all information disclosed during a deposition shall be deemed “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time within which it may be appropriately designated as provided for herein has passed. Any Party that wishes to disclose the transcript, or information contained therein, may provide written notice of its intent to treat the transcript as non-confidential, after which time, any Party that wants to maintain any portion of the transcript as confidential must designate the confidential portions within fourteen (14) days, or else the transcript may be treated as non-

confidential. Any Protected Material that is used in the taking of a deposition shall remain subject to the provisions of this Protective Order, along with the transcript pages of the deposition testimony dealing with such Protected Material. In such cases the court reporter shall be informed of this Protective Order and shall be required to operate in a manner consistent with this Protective Order. In the event the deposition is videotaped, the original and all copies of the videotape shall be marked by the video technician to indicate that the contents of the videotape are subject to this Protective Order, substantially along the lines of “This videotape contains confidential testimony used in this case and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to the terms of the operative Protective Order in this matter or pursuant to written stipulation of the parties.” Counsel for any Producing Party shall have the right to exclude from oral depositions, other than the deponent, deponent’s counsel, the reporter and videographer (if any), any person who is not authorized by this Protective Order to receive or access Protected Material based on the designation of such Protected Material. Such right of exclusion shall be applicable only during periods of examination or testimony regarding such Protected Material.

8. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

(a) A Producing Party may designate Discovery Material as “CONFIDENTIAL” if it contains or reflects confidential, proprietary, medical, psychological, financial, employment, and/or commercially sensitive information.

(b) Unless otherwise ordered by the Court, Discovery Material designated as “CONFIDENTIAL” may be disclosed only to the following:

(i) The Receiving Party’s Outside Counsel, such counsel’s immediate paralegals and staff, and any copying or clerical litigation support services working at the direction of such counsel, paralegals, and staff;

(ii) Not more than three (3) representatives of the Receiving Party who are officers or employees of the Receiving Party, who may be, but need not be, in-



1 house counsel for the Receiving Party, as well as their immediate paralegals and staff,  
2 to whom disclosure is reasonably necessary for this case, provided that: (a) each such  
3 person has agreed to be bound by the provisions of the Protective Order by signing a  
4 copy of Exhibit A; and (b) no unresolved objections to such disclosure exist after  
5 proper notice has been given to all Parties as set forth in Paragraph 10 below;

6 (iii) Any outside expert or consultant retained by the Receiving  
7 Party to assist in this action, provided that disclosure is only to the extent necessary to  
8 perform such work; and provided that: (a) such expert or consultant has agreed to be  
9 bound by the provisions of the Protective Order by signing a copy of Exhibit A; (b)  
10 such expert or consultant is not a current officer, director, or employee of a Party or of  
11 a competitor of a Party, nor anticipated at the time of retention to become an officer,  
12 director or employee of a Party or of a competitor of a Party; (c) such expert or  
13 consultant accesses the materials in the United States only, and does not transport them  
14 to or access them from any foreign jurisdiction; and (d) no unresolved objections to  
15 such disclosure exist after proper notice has been given to all Parties as set forth in  
16 Paragraph 10 below;

17 (iv) Court reporters, stenographers and videographers retained to  
18 record testimony taken in this action;

19 (v) The Court, jury, and court personnel;

20 (vi) Graphics, translation, design, and/or trial consulting  
21 personnel, having first agreed to be bound by the provisions of the Protective Order  
22 by signing a copy of Exhibit A;

23 (vii) Mock jurors who have signed an undertaking or agreement  
24 agreeing not to publicly disclose Protected Material and to keep any information  
25 concerning Protected Material confidential;

26 (viii) Any mediator who is assigned to hear this matter, and his or  
27 her staff, subject to their agreement to maintain confidentiality to the same degree as  
28 required by this Protective Order; and



(ix) Any other person with the prior written consent of the Producing Party.

9. **DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

(a) A Producing Party may designate Discovery Material as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that the disclosure of such Discovery Material is likely to cause economic harm or significant competitive disadvantage to the Producing Party. The Parties agree that the following information, if non-public, shall be presumed to merit the “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing information, financial data, sales information, sales or marketing forecasts or plans, business plans, sales or marketing strategy, product development information, engineering documents, testing documents, employee information, and other non-public information of similar competitive and business sensitivity.

(b) Unless otherwise ordered by the Court, Discovery Material designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

(i) The Receiving Party’s Outside Counsel, provided that such Outside Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party, and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation support services working at the direction of such counsel, paralegals, and staff;

(ii) With respect to Discovery Material produced by the Plaintiff, not more than three (3) in-house counsel of the Receiving Party, as well as their immediate paralegals and staff to whom disclosure is reasonably necessary for this case, provided that: (a) each such person has agreed to be bound by the provisions of the

1 Protective Order by signing a copy of Exhibit A; and (b) no unresolved objections to  
2 such disclosure exist after proper notice has been given to all Parties as set forth in  
3 Paragraph 10 below;

4 (iii) Any outside expert or consultant retained by the Receiving  
5 Party to assist in this action, provided that disclosure is only to the extent necessary to  
6 perform such work; and provided that: (a) such expert or consultant has agreed to be  
7 bound by the provisions of the Protective Order by signing a copy of Exhibit A; (b) such  
8 expert or consultant is not a current officer, director, or employee of a Party or of a  
9 competitor of a Party, nor anticipated at the time of retention to become an officer,  
10 director, or employee of a Party or of a competitor of a Party; (c) such expert or  
11 consultant is not involved in competitive decision-making, as defined by *U.S. Steel v.*  
12 *United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a  
13 competitor of a Party; (d) such expert or consultant accesses the materials in the  
14 United States only, and does not transport them to or access them from any  
15 foreign jurisdiction; and (e) no unresolved objections to such disclosure exist after  
16 proper notice has been given to all Parties as set forth in Paragraph 10 below;

17 (iv) Court reporters, stenographers and videographers retained to  
18 record testimony taken in this action;

19 (v) The Court, jury, and court personnel;

20 (vi) Graphics, translation, design, and/or trial consulting  
21 personnel, having first agreed to be bound by the provisions of the Protective Order  
22 by signing a copy of Exhibit A;

23 (vii) Any mediator who is assigned to hear this matter, and his or  
24 her staff, subject to their agreement to maintain confidentiality to the same degree as  
25 required by this Protective Order; and

26 (viii) Any other person with the prior written consent of the  
27 Producing Party.  
28

(c) In addition, a Party may disclose arguments and materials derived from Discovery Material designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to mock jurors who have signed an undertaking or agreement agreeing not to publicly disclose Protected Material and to keep any information concerning Protected Material confidential. A Party may not disclose to mock jurors any original, as-produced materials or information (including, for example, documents, deposition testimony, or interrogatory responses) produced by another Party designated as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

10. **NOTICE OF DISCLOSURE**

(a) Prior to disclosing any Protected Material to any person described in Paragraphs 8(b)(ii), 8(b)(iii), 9(b)(ii), or 9(b)(iii) (referenced below as “Person”), the Party seeking to disclose such information shall provide the Producing Party with written notice that includes:

- (i) the name of the Person;
- (ii) an up-to-date curriculum vitae of the Person;
- (iii) the present employer and title of the Person;
- (iv) an identification of all of the Person’s past and current employment and consulting relationships, including direct relationships and relationships through entities owned or controlled by the Person, including but not limited to an identification of any individual or entity with or for whom the person is employed or to whom the person provides consulting services;
- (v) an identification of all pending patent applications on which the Person is named as an inventor, in which the Person has any ownership interest, or as to which the Person has had or anticipates in the future any involvement in advising on, consulting on, preparing, prosecuting, drafting, editing, amending, or otherwise affecting the scope of the claims; and
- (vi) a list of the cases in which the Person has testified at deposition or trial within the last five (5) years.

1 Further, the Party seeking to disclose Protected Material shall provide such other  
2 information regarding the Person's professional activities reasonably requested by the  
3 Producing Party for it to evaluate whether good cause exists to object to the disclosure  
4 of Protected Material to the outside expert or consultant.

5 (b) Within fourteen (14) days of receipt of the disclosure of the Person,  
6 the Producing Party or Parties may object in writing to the Person for good cause. In  
7 the absence of an objection at the end of the fourteen (14) day period, the Person shall  
8 be deemed approved under this Protective Order. There shall be no disclosure of  
9 Protected Material to the Person prior to expiration of this fourteen (14) day period. If  
10 the Producing Party objects to disclosure to the Person within such fourteen (14) day  
11 period, the Parties shall meet and confer via telephone or in person within seven (7)  
12 days following the objection and attempt in good faith to resolve the dispute on an  
13 informal basis. If the dispute is not resolved, the Party objecting to the disclosure will  
14 have seven (7) days from the date of the meet and confer to seek relief from the Court.  
15 Each Party agrees to seek relief from the Court through the expedited dispute resolution  
16 procedures set forth in the "Discovery dispute resolution" section of "The Standing  
17 Order for Civil Cases – Magistrate Judge Virginia K. DeMarchi for the United State  
18 District Court, Northern District of California, San Jose Division". If relief is not sought  
19 from the Court in this manner within the seven (7) day time specified, the objection  
20 shall be deemed withdrawn. If relief is sought, designated materials shall not be  
21 disclosed to the Person in question until the Court resolves the objection.

22 (c) For purposes of this section, "good cause" shall include an  
23 objectively reasonable concern that the Person will, advertently or inadvertently, use or  
24 disclose Discovery Materials in a way or ways that are inconsistent with the provisions  
25 contained in this Order.

26 (d) Prior to receiving any Protected Material under this Order, the  
27 Person must execute a copy of the "Agreement to Be Bound by Protective Order"  
28 (Exhibit A hereto) and serve it on all Parties.

(e) An initial failure to object to a Person under this Paragraph 10 shall not preclude the nonobjecting Party from later objecting to continued access by that Person for good cause. If an objection is made, the Parties shall meet and confer via telephone or in person within seven (7) days following the objection and attempt in good faith to resolve the dispute informally. If the dispute is not resolved, the Party objecting to the disclosure will have seven (7) days from the date of the meet and confer to seek relief from the Court. The designated Person may continue to have access to information that was provided to such Person prior to the date of the objection. If a later objection is made, no further Protected Material shall be disclosed to the Person until the Court resolves the matter or the Producing Party withdraws its objection. Notwithstanding the foregoing, if the Producing Party fails to move for a protective order within seven (7) business days after the meet and confer, further Protected Material may thereafter be provided to the Person.

#### 11. **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

(a) A Party shall not be obligated to challenge the propriety of any designation of Discovery Material under this Order at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto.

(b) Any challenge to a designation of Discovery Material under this Order shall be written, shall be served on outside counsel for the Producing Party, shall particularly identify the documents or information that the Receiving Party contends should be differently designated, and shall state the grounds for the objection. Thereafter, further protection of such material shall be resolved in accordance with the following procedures:

(i) The objecting Party shall have the burden of conferring either in person, in writing, or by telephone with the Producing Party claiming protection (as well as any other interested party) in a good faith effort to resolve the dispute. The Producing Party shall have the burden of justifying the disputed designation;

(ii) Failing agreement, the Receiving Party may seek relief from the Court for a ruling that the Discovery Material in question is not entitled to the status and protection of the Producing Party's designation. Each Party agrees to seek relief from the Court through the expedited dispute resolution procedures set forth in the "Discovery dispute resolution" section of "The Standing Order for Civil Cases – Magistrate Judge Virginia K. DeMarchi for the United State District Court, Northern District of California, San Jose Division". The Parties' entry into this Order shall not preclude or prejudice either Party from arguing for or against any designation, establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information;

(iii) Notwithstanding any challenge to a designation, the Discovery Material in question shall continue to be treated as designated under this Order until one of the following occurs: (a) the Party who designated the Discovery Material in question withdraws such designation in writing; or (b) the Court rules that the Discovery Material in question is not entitled to the designation.

## 12. **SUBPOENAS OR COURT ORDERS**

(a) If at any time Protected Material is subpoenaed by any court, arbitral, administrative, or legislative body, the Party to whom the subpoena or other request is directed shall immediately give prompt written notice thereof to every Party who has produced such Discovery Material and to its counsel and shall provide each such Party with an opportunity to move for a protective order regarding the production of Protected Materials implicated by the subpoena.

## 13. **FILING PROTECTED MATERIAL**

(a) Absent written permission from the Producing Party or a court Order secured after appropriate notice to all interested persons, a Receiving Party may not file or disclose in the public record any Protected Material.

(b) Each Party shall comply with Local Rule 79-5 in connection with any motion to seal, and pursuant to this rule may provisionally file under seal with the

1 Court any brief, document or materials that are designated as Protected Material under  
2 this Order, pending the Court's ruling on the motion to seal.

3 14. **INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

4 (a) The inadvertent production by a Party of Discovery Material subject  
5 to the attorney-client privilege, work-product protection, or any other applicable  
6 privilege or protection, despite the Producing Party's reasonable efforts to prescreen  
7 such Discovery Material prior to production, will not waive the applicable privilege  
8 and/or protection if a request for return of such inadvertently produced Discovery  
9 Material is made promptly after the Producing Party learns of its inadvertent production.

10 (b) Upon a request from any Producing Party who has inadvertently  
11 produced Discovery Material that it believes is privileged and/or protected, each  
12 Receiving Party shall immediately return such Protected Material or Discovery Material  
13 and all copies to the Producing Party, except for any pages containing privileged  
14 markings by the Receiving Party which shall instead be destroyed and certified as such  
15 by the Receiving Party to the Producing Party.

16 (c) Nothing herein shall prevent the Receiving Party from preparing a  
17 record for its own use containing the date, author, addresses, and topic of the  
18 inadvertently produced Discovery Material and such other information as is reasonably  
19 necessary to identify the Discovery Material and describe its nature to the Court in any  
20 request to compel production of the Discovery Material. With respect to any such  
21 request, each Party agrees to seek relief from the Court through the expedited dispute  
22 resolution procedures set forth in the "Discovery dispute resolution" section of "The  
23 Standing Order for Civil Cases – Magistrate Judge Virginia K. DeMarchi for the United  
24 State District Court, Northern District of California, San Jose Division".

25 15. **INADVERTENT FAILURE TO DESIGNATE PROPERLY**

26 (a) The inadvertent failure by a Producing Party to designate Discovery  
27 Material as Protected Material with one of the designations provided for under this  
28 Order shall not waive any such designation provided that the Producing Party notifies



all Receiving Parties that such Discovery Material is protected under one of the categories of this Order within fourteen (14) days of the Producing Party learning of the inadvertent failure to designate. The Producing Party shall reproduce the Protected Material with the correct confidentiality designation within seven (7) days upon its notification to the Receiving Parties. Upon receiving the Protected Material with the correct confidentiality designation, the Receiving Parties shall return or securely destroy, at the Producing Party's option, all Discovery Material that was not designated properly.

(b) A Receiving Party shall not be in breach of this Order for any use of such Discovery Material before the Receiving Party receives such notice that such Discovery Material is protected under one of the categories of this Order, unless an objectively reasonable person would have realized that the Discovery Material should have been appropriately designated with a confidentiality designation under this Order. Once a Receiving Party has received notification of the correct confidentiality designation for the Protected Material with the correct confidentiality designation, the Receiving Party shall treat such Discovery Material (subject to the exception in Paragraph 15(c) below) at the appropriately designated level pursuant to the terms of this Order.

(c) Notwithstanding the above, a subsequent designation of "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall apply on a going forward basis and shall not disqualify anyone who reviewed "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or materials while the materials were not marked "CONFIDENTIAL – ATTORNEYS' EYES ONLY" from engaging in the activities set forth in Paragraph 6(b).

16. **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

(a) In the event of a disclosure of any Discovery Material pursuant to this Order to any person or persons not authorized to receive such disclosure under this Protective Order, the Party responsible for having made such disclosure, and each Party with knowledge thereof, shall immediately notify counsel for the Producing Party

1 whose Discovery Material has been disclosed and provide to such counsel all known  
 2 relevant information concerning the nature and circumstances of the disclosure. The  
 3 responsible disclosing Party shall also promptly take all reasonable measures to retrieve  
 4 the improperly disclosed Discovery Material and to ensure that no further or greater  
 5 unauthorized disclosure and/or use thereof is made

6 (b) Unauthorized or inadvertent disclosure does not change the status of  
 7 Discovery Material or waive the right to hold the disclosed document or information as  
 8 Protected.

9 17. **FINAL DISPOSITION**

10 (a) Not later than ninety (90) days after the Final Disposition of this  
 11 case, each Party shall return all Discovery Material of a Producing Party to the  
 12 respective outside counsel of the Producing Party or destroy such Material, at the option  
 13 of the Producing Party. For purposes of this Order, “Final Disposition” occurs after an  
 14 order, mandate, or dismissal finally terminating the above-captioned action with  
 15 prejudice, including all appeals.

16 (b) All Parties that have received any such Discovery Material shall  
 17 certify in writing that all such materials have been returned to the respective outside  
 18 counsel of the Producing Party or destroyed. Notwithstanding the provisions for return  
 19 of Discovery Material, outside counsel may retain one set of pleadings, correspondence  
 20 and attorney and consultant work product (but not document productions) for archival  
 21 purposes.

22 18. **DISCOVERY FROM EXPERTS OR CONSULTANTS**

23 (a) Absent good cause, drafts of reports of testifying experts, and  
 24 reports and other written materials, including drafts, of consulting experts, shall not be  
 25 discoverable.

26 (b) Reports and materials exempt from discovery under the foregoing  
 27 Paragraph shall be treated as attorney work product for the purposes of this case and  
 28 Protective Order.

1           19.    **MISCELLANEOUS**

2                   (a)    **Right to Further Relief.** Nothing in this Order abridges the right of  
3 any person to seek its modification by the Court in the future. By stipulating to this  
4 Order, the Parties do not waive the right to argue that certain material may require  
5 additional or different confidentiality protections than those set forth herein.

6                   (b)    **Termination of Matter and Retention of Jurisdiction.** The Parties  
7 agree that the terms of this Protective Order shall survive and remain in effect after the  
8 Final Determination of the above-captioned matter. The Court shall retain jurisdiction  
9 after Final Determination of this matter to hear and resolve any disputes arising out of  
10 this Protective Order.

11                  (c)    **Successors.** This Order shall be binding upon the Parties hereto,  
12 their attorneys, and their successors, executors, personal representatives, administrators,  
13 heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained  
14 consultants and experts, and any persons or organizations over which they have direct  
15 control.

16                  (d)    **Right to Assert Other Objections.** By stipulating to the entry of this  
17 Protective Order, no Party waives any right it otherwise would have to object to  
18 disclosing or producing any information or item. Similarly, no Party waives any right  
19 to object on any ground to use in evidence of any of the material covered by this  
20 Protective Order. This Order shall not constitute a waiver of the right of any Party to  
21 claim in this action or otherwise that any Discovery Material, or any portion thereof, is  
22 privileged or otherwise non-discoverable, or is not admissible in evidence in this action  
23 or any other proceeding.

24                  (e)    **Burdens of Proof.** Notwithstanding anything to the contrary above,  
25 nothing in this Protective Order shall be construed to change the burdens of proof or  
26 legal standards applicable in disputes regarding whether particular Discovery Material  
27 is confidential, which level of confidentiality is appropriate, whether disclosure should  
28 be restricted, and if so, what restrictions should apply.

(f) Modification by Court. This Order is subject to further court order based upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the interests of justice. The United States District Court for the Northern District of California, San Jose Division, is responsible for the interpretation and enforcement of this Order in this action, Case No. Case No. 5:22-cv-04244-EJD (VKD). All disputes concerning Protected Material, however designated, produced under the protection of this Order in this action, Case No. Case No. 5:22-cv-04244-EJD (VKD), shall be resolved by the United States District Court for the Northern District of California, San Jose Division.

(g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Northern District of California, or the Court's own orders. Identification of any individual pursuant to this Protective Order does not make that individual available for deposition or any other form of discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Northern District of California, or the Court's own orders.

**SO ORDERED.**

Dated: April 21, 2023

LITTLER MENDELSON, P.C.

/s/Amy Todd-Gher

Amy Todd-Gher  
Nicholas C. Lansdown  
Attorneys for Defendant  
APPLE INC.

1 Dated: April 21, 2023

COSTANZO LAW FIRM, APC

4 /s/Frank Zeccola

Lori J. Costanzo  
Frank Zeccola

6 Attorneys for Plaintiff  
JOSEPH FANTA

10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11 Dated: April 24, 2023

12   
Virginia K. DeMarchi

United States Magistrate Judge

**Attestation of Signatures**

\*\*Pursuant to Local Rule 5-4.3.4(a)(2), the filer attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: April 21, 2023

**LITTLER MENDELSON, P.C.**

By: /s/ Amy Todd-Gher

Attorney for Apple, Inc.

**EXHIBIT A**

I, \_\_\_\_\_, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *JOSEPH FANTA v. APPLE INC.*, United States District Court, Northern District of California, San Jose Division, Civil Action No. 5:22-CV-04244-EJD. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: \_\_\_\_\_

Present occupation/job description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Company or Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_

[Signature] \_\_\_\_\_

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